IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 13402 of 2004

Between:

Harijana Labour Contract Co-op. Society Limited, H.No.750, Ummadivaram Village, Vinukonda Mandal, Guntur District, Rep. by its President

V.P. Ranga Rao.

..... PETITIONER

AND

The Executive Engineer, Fisheries Department,
Commissioner's Office, Shantinagar, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly in the nature of Writ of Mandamus declaring the action of the respondent cancelling the tender dated 8-5-2004 just basing on the news paper report without having any reasons and when contractors quoted lesser rates then the estimated cost is illegal, arbitrary and violation of principles of natural justice, tender rules and regulations and Article 14, 19 (1)g of the Indian Constitution, consequently direct the respondent not to cancel the tender dated 8-5-2004 by allotting highest bidder in pursuance of the tender notification.

Counsel for the Petitioner : MR. KOONA REDDY ANJI REDDY

Counsel for the Respondent : GP FOR FISHERIES

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.13402 of 2004

ORDER :

This writ petition is filed being aggrieved by the action of the respondent – Executive Engineer, Fisheries Department, Shanthinagar, Hyderabad in cancelling the tenders in pursuance of the tender notification, dated 08-05-2004.

It is not in dispute that the respondent herein published the tender notification in question in the local dailies inviting tenders for repairs of Fish Seed Farm, Sunkesula in Kurnool District along with some other similar works in different districts. The petitioner who claims to be a Society registered under the provisions of A.P. Co-operative Societies Act, 1964 filed tender for two works under the said notification along with 11 other bidders. The petitioner states that it has quoted 25% less than estimated cost and the petitioner Society was found to be the successful bidder. However, the respondent, basing on news items published in the local dailies stating that the tenderers have formed into a ring, cancelled the tenders without assigning any reasons. The said action is questioned in this writ petition.

The contention of the petitioner is that cancellation of the tender merely on the basis of the newspaper reports, without conducting any enquiry into the allegations

and without assigning any reasons, is arbitrary and illegal. It is also contended that since the bids were already opened in which it was found that the lowest bidder has quoted 25% less than the estimated value of the work, the respondent is not justified in cancelling the tenders. It is also contended that the allegation that the contractors have formed into a ring is false and incorrect. The fact that nine contractors participated in the tenders and quoted the different rates itself shows that the said allegation is without any basis.

The respondent filed a counter-affidavit denying the allegations made in the petition and stating that in pursuance of the tender notification published in the local dailies on 15-05-2004 a total number of 230 tender schedules were sold out for 15 items of civil works mentioned thereunder. However, the respondent received only 175 sealed tenders. So far as Item No.8-A and 8-D of the tender notice, 12 tenders were received from the contractors including that of the petitioner and they were opened on 31-05-2004. The petitioner was found to be the lowest bidder among the tenderers. However, on 1-06-2004 a news item was published in 'Eenadu Daily' alleging formation of ring among the bidders. During enquiry, it was also found that before opening the tenders, the contractors were discussing among themselves about the ring formation. In the circumstances, in order to safeguard the public interest and with a view to ensure transparency, the tenders were cancelled. Thus, it is pleaded that all the allegations of the petitioner are false and that the impugned cancellation is only in the interest of the public and to ensure transparency in the administration.

I have heard the learned Counsel for both parties and perused the material on record.

The only question that arises for consideration is whether the impugned action of the respondent in cancelling the tenders warrants interference of this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

Admittedly, the petitioner is the lowest bidder. However, the law is well settled

that a person inviting tenders is under no legal obligation to accept the tender even if it is the highest or lowest and that a contract will conclude only when the tender is accepted and an order is placed.

It is also a well settled principle of law that where the terms and conditions of the tender empower the Tender Inviting Authority to cancel the tender without assigning any reason whatsoever, no right will accrue to the tenderer unless and until the tender is accepted. It is not in dispute that the respondent is conferred with such power under the terms and conditions. The reason for which the tender was cancelled also cannot be said to be not valid or without justification since it is the specific case of the respondent that a Cartel was formed among the tenderers due to which the bids received were found to be not competitive. Cancellation of tender on such a ground is undoubtedly in public interest. Particularly in the absence of any specific allegation of mala fides, I do not see any justifiable reason to hold the action of the respondent is arbitrary or illegal.

Hence, writ petition is devoid of any merit and is accordingly dismissed. No costs.

10th September, 2004.

Gbs

To

1. The Executive Engineer, Fisheries Department,
   Commissioner's Office, Shantinagar, Hyderabad.

2.2CCs to G.P. for Fisheries, High Court of AP Bldgs, Hyderabad (OUT).

3.2CD copies